



# City of Santa Clara

## Meeting Agenda

### Ad-Hoc Stadium Audit Committee

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Monday, October 29, 2018

5:00 PM

City Hall Council Chambers

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#### CALL TO ORDER AND ROLL CALL

#### CONSENT CALENDAR

1. 18-1462 [Action on Ad-Hoc Stadium Audit Committee Minutes](#)

**Recommendation:** Approve the minutes for the March 19, 2018 Ad-Hoc Stadium Audit Committee meeting.

#### PUBLIC PRESENTATIONS

#### GENERAL BUSINESS

2. 18-1414 [Status of Harvey M. Rose Associates Audit Recommendations](#)

**Recommendation:** Note and file an update on the Status of the Harvey M. Rose Associates Audit Recommendations.

#### STAFF REPORT

#### COMMISSIONERS REPORT

#### ADJOURNMENT

*There are no future Ad-Hoc Stadium Audit Committee meetings scheduled at this time.*

Agenda Report

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**18-1462**

**Agenda Date: 10/29/2018**

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**SUBJECT**

Action on Ad-Hoc Stadium Audit Committee Minutes

**RECOMMENDATION**

Approve the minutes for the March 19, 2018 Ad-Hoc Stadium Audit Committee meeting.



# City of Santa Clara

## Meeting Minutes Ad-Hoc Stadium Audit Committee

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03/19/2018

5:00 PM

City Hall Council Chambers

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### Call to Order and Roll Call

**Chairperson Gillmor** called the meeting to order at 5:02 PM.

**Present** 3 - Chairperson Lisa M. Gillmor, Committee Member Teresa O'Neill,  
and Committee Member Patrick Kolstad

[18-281](#) Ad Hoc Stadium Audit Committee Meeting Minutes

**Recommendation:** Approve the Ad Hoc Stadium Audit Committee Meeting Minutes for  
November 27, 2018.

**A motion was made by Committee Member Kolstad, seconded by  
Committee Member O'Neill, to approve the minutes of November 27,  
2018.**

**Aye:** 3 - Chairperson Gillmor, Committee Member O'Neill, and Committee  
Member Kolstad

### Public Presentations

None.

### General Business

1. [18-320](#) Information memo on reconciliation of public safety expenditures and fiscal reporting

**A motion was made by Committee Member Kolstad, seconded by  
Committee Member O'Neill, to note and file the Information  
Memorandum on Reconciliation of Public Safety Expenditures and  
Fiscal Reporting.**

**Aye:** 3 - Chairperson Gillmor, Committee Member O'Neill, and Committee  
Member Kolstad

2. [18-285](#) Status of Harvey M. Rose Associates Audit Recommendations

**Recommendation:** Note and file an update on the Status of the Harvey M. Rose Associates Audit Recommendations and accept the proposed work plan for the period March - July 2018.

**A motion was made by Committee Member Kolstad, seconded by Committee Member O'Neill, to note and file the Status of Harvey M. Rose Associates Measure J Compliance Audit Recommendations.**

**Aye:** 3 - Chairperson Gillmor, Committee Member O'Neill, and Committee Member Kolstad

3. [18-319](#) Review of options for Santa Clara Stadium Authority (SCSA) Auditor

**A motion was made by Committee Member Kolstad, seconded by Committee Member O'Neill, to Direct the Executive Director to bring for the Stadium Authority Board's consideration for the appointment of a City employee to the position of Auditor of the Stadium Authority.**

**Aye:** 3 - Chairperson Gillmor, Committee Member O'Neill, and Committee Member Kolstad

**Chairperson Gillmor** opened the floor for Public Comment.

**Michael O'Halloran** made general comments and concerns regarding the financial issues related to the Stadium.

### **Adjournment**

**Chairperson Gillmor** adjourned the meeting at 6:39 PM.

Agenda Report

18-1414

Agenda Date: 10/29/2018

**REPORT TO STADIUM AUDIT COMMITTEE**

**SUBJECT**

Status of Harvey M. Rose Associates Audit Recommendations

**BACKGROUND**

On November 27, 2017, staff presented the following to the Ad-Hoc Stadium Audit Committee (Committee): (1) standard audit recommendation tracking matrix listing the thirty-seven audit recommendations, (2) designation for the status of the recommendation (e.g., Complete, Partially Complete, or Not Implemented), and (3) action taken to date. This matrix continues to be used as a tool to track staff's progress and will continue to be presented to the Committee at future meetings.

On March 19, 2018, staff provided an update to the Committee on the progress towards implementing the thirty-seven audit recommendations.

**DISCUSSION**

The attached Harvey M. Rose Audit Recommendations matrix provides the auditor's recommendation and a detailed description of the action taken as of October 2018. The matrix is color coded by status with items that were previously deemed as completed shown in grey, new proposed completed items shown in green, and partially complete (items that are in process) shown in orange.

The table below shows that 68% (25 of 37) of audit recommendations are complete and none are in the "Not Implemented" status-a near 40% increase in completed audit recommendations since March. Table 1 reflects staff's progress of implementing the audit recommendations from March to October 2018:

**Table 1: Summary of Audit Recommendations Status - March to October 2018**

Status	Progress of Audit Recommendations as of March 2018	Progress of Audit Recommendations as of October 2018	% Change
Complete	18	25	39%↑
Partially Complete	14	12	14%↓
Not Implemented	5	0	100%↓
<b>TOTAL</b>	<b>37</b>	<b>37</b>	

During the last seven months, staff has made significant progress in implementing the audit recommendations and other management/oversight improvements of the Stadium Authority. Some of the remaining outstanding audit recommendations are more difficult to implement as they require cooperation, collaboration, and/or consent from ManCo and StadCo as noted in the updates of the

attached matrix, for example:

- Recommendation #1.I requires amending the Management Agreement and the Amended and Restated Stadium Lease to correct conflicting language concerning the furnishing of the Annual Statement of Stadium Operations; and
- Recommendation # 1.O requires amending the Management Agreement to require formal and/or informal bidding procedures.

Staff has been successful in implementing the audit recommendations and strengthening oversight of Stadium Authority operations. One of the key results from the audit is the recent inclusion of Non-NFL event information in the Stadium Authority's Financial Status Report for the Quarter and Fiscal Year Ending March 31, 2018 which provided a greater level of transparency and provided the overall financial results of the Non-NFL events while still maintaining the confidentiality related to a specific event.

That information alone provides greater transparency about management decisions made with respect to scheduling of Non-NFL events, revenue or losses, and foundational information about future public policy making decisions relative to neighborhood impacts.

Since presenting the information, staff has completed analyses of the remaining Fiscal Years and the following table reflects the Non-NFL event information for all four years of Stadium operations and is responsive to recommendations 1.M and 2.B:

**Net Revenue for Non-NFL Events**

EVENT TYPE	2014/15		2015/16		2016/17		2017/18	
	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue
<b>Ticketed Events</b>								
Concerts	0	\$ -	7	\$ 3,791,985	4	\$ 2,424,572	2	\$ 1,819,099
Sporting events:								
Football (non-NFL)	5	(3,007,907)	4	(2,316,903)	4	(2,946,165)	4	(3,601,827)
Soccer	2	3,948,144	2	891,300	5	2,414,209	3	3,228,754
Miscellaneous events	2	2,504,912	4	(149,392)	5	(159,175)	4	76,379
Subtotal Ticketed Events	9	\$ 3,445,149	17	\$ 2,216,989	18	\$ 1,733,441	13	\$ 1,522,405
Special Events (weddings, corporate events, etc.)	186	\$ 1,762,404	204	\$ 3,862,027	127	\$ 3,583,453	113	\$ 3,640,924
<b>Total Non-NFL Net Revenue</b>	<b>195</b>	<b>\$ 5,207,553</b>	<b>221</b>	<b>\$ 6,079,016</b>	<b>145</b>	<b>\$ 5,316,894</b>	<b>126</b>	<b>\$ 5,163,329</b>
<b>Total Performance Rent paid to the General Fund*</b>		<b>\$ 2,513,777</b>		<b>\$ 2,932,008</b>		<b>\$ 2,533,447</b>		<b>\$ 2,439,164</b>
<b>Average General Fund Revenue per Ticketed Event</b>		<b>\$ 184,782</b>		<b>\$ 62,899</b>		<b>\$ 45,887</b>		<b>\$ 55,322</b>

\*Performance Rent is calculated at 50% of the net revenue for Non-NFL events less performance-based credit of 50% of fixed Ground Rent

As shown in the table above, the average net income per ticketed event that benefits the City of Santa Clara's General Fund ranges from a high of \$184,782 in 2014/15 (the first year of operations) to a low of \$45,887 in 2016/17. Based on the analysis shown above, it is evident that concerts, soccer, and special events (weddings, corporate events, birthday parties, etc.) are positive revenue generators for the Stadium Authority. However, it is clear that Non-NFL football events (college and high school) have generated substantial losses to the Stadium Authority for all four years. This trend aligns with recent Stadium Authority Board action to establish a separate agreement for the College Football Playoff (CFP) to safeguard the SCSA against the negative fiscal impact relative to this event - which most recently for the Atlanta CFP game resulted in local subsidies of approximately \$12 - \$14 million. The value of this information illustrates that these losses have a direct impact on reducing the

Performance Rent that is paid to the City's General Fund.

As the next step in completing the audit recommendations, staff intends to return to the Committee in March 2019 to provide an update on the remaining 12 audit recommendations.

### **COORDINATION**

This report was coordinated with the City Attorney's Office.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environment Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

### **FISCAL IMPACT**

There is no fiscal impact to the Stadium Authority with this status update; however, there are decisions that the Ad Hoc Committee will recommend to the SCSA Board that may have a fiscal impact. Further, staff is currently analyzing the audit data to determine if any additional reimbursement is due from the Stadium Authority to the City's General Fund.

### **PUBLIC CONTACT**

Public contact was made by posting the Ad-Hoc Stadium Audit Committee agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

Note and file an update on the Status of the Harvey M. Rose Associates Audit Recommendations.

Reviewed by: Angela Kraetsch, Treasurer

Approved by: Deanna J. Santana, Executive Director

### **ATTACHMENTS**

1. Status of Harvey M. Rose Associates Audit Recommendations
2. Recommendation 1.N - Letter to Stadium Manager
3. Recommendation 2.A and 2.I - Letter to ManCo
4. Recommendation 1.F and 4.C - Letter to Stadium Manager
5. Recommendation 2.D - Overview of Comprehensive Audit Program

# STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

## 1. COMPLIANCE WITH STADIUM AUTHORITY AGREEMENTS

Audit Recommendation	Current Status	Action Taken
<b>1.A</b> The Stadium Authority Board should direct the Executive Director to request the public safety costs threshold be adjusted through negotiations with StadCo to reflect actual costs to the City for providing public safety services for NFL events.	Partially Complete	Meetings were held on September 20, 2018 and October 4, 2018 for the purpose of engaging in good faith negotiations with respect to an increase in the Public Safety Cost Threshold. At this time, the Stadium Authority is awaiting a response from StadCo.
<b>1.B</b> The Stadium Authority Board should direct the Executive Director and Stadium Authority counsel to notify ManCo that the absence of five year capital expenditure plans for FYs 2014-15 and 2015-16 was a breach of Section 10.3 of the Stadium Lease and that ManCo is required to provide such plans under the lease for the current and all future Stadium Authority fiscal years.	Complete	ManCo provided a five-year capital expenditure plan in February 2017 for the Fiscal Years 2017-18 thru 2021-22. This plan was incorporated into the Stadium Authority's Adopted Fiscal Year 2017-18 SCSA Budget. ManCo was notified that they were to provide a five year capital expenditure plan going forward. ManCo provided a five-year capital expenditure plan in February 2018 and this plan was incorporated into the Stadium Authority's Proposed Fiscal Year 2018-19 Budget.
<b>1.C</b> The Stadium Authority Board should direct the Executive Director to provide a copy of the Operation and Maintenance Plan to the Stadium Authority Board for review, in closed session if deemed necessary for public safety reasons by the Stadium Authority counsel.	Complete	In accordance with Section 3.1 of the Stadium Operations Agreement, Section 4.5 of the Stadium Management Agreement, and Section 7.2 of the Stadium Lease Agreement, the 49ers Management Company (ManCo) is responsible for preparing the Stadium Operation and Maintenance Plan (SOMP). The SOMP consists of the Annual Shared Stadium Expense Budget, Annual Public Safety Budget and Capital Expenditure Plan, as well as the Annual Public Safety Budget and the Amortization of Public Safety Capital Expenditures. For Fiscal Year 2018-19 all documents were presented to the Stadium Authority Board at its March 13 meeting. The SCSA Board approved the SCSA Budgets, comprising the SOMP, at the March 27, 2018 meeting.
<b>1.D</b> The Stadium Authority Board should require that Stadium Authority staff and ManCo prepare an annual public safety budget in conjunction with the City's public safety departments detailing both NFL and non-NFL event public safety costs for submission to and adoption by the Board.	Complete	ManCo provided a Public Safety Budget to staff in February 2017 during the 2017-18 budget process. This was also provided to staff on February 7, 2018 as part of the 2018-19 budget process. The Public Safety Budget was included as part of the 2018-19 Adopted SCSA Budget that was presented to the Board on March 13, 2018. The SCSA Board approved the SCSA budget, comprising the SOMP, at the March 27, 2018 meeting.
<b>1.E</b> The Stadium Authority Board should direct the Executive Director to renegotiate provisions of the Stadium Lease so that the Stadium Authority receives a share of any concessionaire revenue that exceeds the minimum guaranteed amount from non-NFL events.	Complete	The Stadium Authority does receive revenue in excess of minimum per Stadium Lease: 7.3.2 Concession Revenue. In February 2018, the SCSA Board approved a new concessionaire contracts and included in that presentation was detail of how the SCSA receives revenue. Underway is also the effort to clarify by fiscal year the exact amount generated for Food & Beverage (F&B) revenue.
<b>1.F</b> The Stadium Authority Board should direct the Executive Director to notify StadCo that a formal consolidated draft parking plan must be produced and delivered to the Community Development Department and to the Board for review and approval as required under the Stadium Lease.	Partially Complete	Stadium Authority staff agrees with the audit that the information provided in the one page summary of parking lots in the TMOP is not adequate to determine the available and utilized parking facilities. Staff has also determined that Stadium Manager requires information from the City permit applications in order to provide a complete consolidated parking plan. City staff will determine what can be provided from the existing permit applications, and what modifications to the City permit application are required, to provide the necessary information to the Stadium Manager to prepare a complete consolidated parking plan.



## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<p><b>1.G</b> The Stadium Authority Board should direct the Chief of Police to present the public safety plan to the Stadium Authority Board for review and formal approval (in closed session if deemed necessary by Stadium Authority counsel) and to present any updates to the public safety plan to the Stadium Authority Board for review and documented adoption.</p>	Complete	In light of recent national incidents and heightened focus on large crowds, it should be noted that the Plan is dynamic and will require adjustments to respond to various public safety conditions. The public safety plan has been approved and the Executive Director is in possession of a copy under lock and key. The Council can review this plan on an individual basis. In addition, Public Safety experts have been contracted to review the current public safety model and work is underway.
<p><b>1.H</b> The Stadium Authority Board should direct the Executive Director to formally notify StadCo that the total cost for stadium insurance must be disclosed in the shared stadium expenses budget pursuant to Section 4.6 of the Management Agreement and, based on the disclosure, consider proposing to StadCo an amendment to the Stadium Lease to remove the provision that the Stadium Authority pay a fixed amount of insurance costs, with StadCo paying an unknown amount.</p>	Complete	Section 8.3.1 of the Stadium Lease states that the Stadium Authority Insurance Share shall be calculated as follows: (i) for the first lease year the Stadium Authority Insurance Share shall equal two million five hundred fifty thousand dollars (\$2,550,000) and (ii) on the commencement of the second and each succeeding lease year, the insurance shall be increased by three percent (3%). This fixed rate for insurance was included in the Facility Rent calculation as part of exhibit J and confirmed as part of the Rent Arbitration award. An amendment to the Management Agreement is not recommended at this time.
<p><b>1.I</b> The Stadium Authority Board should direct the Executive Director to formally notify StadCo and ManCo that ManCo is in breach of the Management Agreement because it did not furnish Annual Statements of Stadium Operations for FYs 2014-15 and 2015-16, and to require that such statements be provided for those years, for FY 2016-17 and each year thereafter.</p>	Partially Complete	<b>The Management Agreement and Amended and Restated Stadium Lease provides conflicting language concerning the selection of the third-party certified public accountant (underlined below) that would be contracted to prepare the Annual Statement of Stadium Operations.</b> The Section 4.2 of the Management Agreement states that the Stadium Manager shall furnish to the Stadium Authority and StadCo a statement for such Fiscal Year, prepared by a qualified, third-party certified public accountant <u>selected by StadCo and approved by the Stadium Authority</u> , setting forth such information as specified in the Stadium Lease. Section 8.3.3 of the Amended and Restated Stadium Lease states that the Landlord (Stadium Authority) shall furnish (or cause the Stadium Manager to furnish) to Tenant (StadCo) a statement for such Lease Year an Annual Statement of Stadium Operations prepared by a qualified, third-party independent certified public accountant <u>selected by Landlord (Stadium Authority) and approved by Tenant (StadCo)</u> . Based on the conflicting language, staff is currently reviewing the next steps to address this recommendation. However, staff agrees that it is in the best interest of the Stadium Authority to enter into an agreement with an outside auditor to prepare an Annual Statement of Stadium Operations.
<p><b>1.J</b> The Stadium Authority Board should direct the Executive Director to send formal notification to ManCo and StadCo that ManCo was in apparent breach of the Stadium Lease requirement that a one year budget and five year projection of shared Stadium expenses be provided on an annual basis to the Stadium Authority and demanding that ManCo provide such budgets and projections for the current and all future years. The Executive Director should be directed to provide a written response to ManCo each year on the draft budget submitted by ManCo.</p>	Complete	ManCo provided a one year budget and five year projection of shared stadium expenses to staff in February 2017 during the 2017-18 budget process. ManCo was notified that they were to provide this plan annually. These documents were provided to SCSA staff in February 2018 during the 2018-19 budget process and incorporated into the 2018-19 Adopted SCSA Budget.

## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<p><b>1.K</b> The Stadium Authority Board should direct the Executive Director and Treasurer to work with ManCo to require that the annual operating budget and quarterly financial status reports disclose sufficient information to ensure that staff and the Board can determine whether the Stadium Authority is adhering to Stadium Lease requirements contained in Article 14 regarding the allocation of excess Stadium Authority revenue.</p>	Complete	<p>Article 14 of the Amended and Restated Stadium Authority Lease Agreement describes the steps if Stadium Authority Revenue exceeds Stadium Authority Expenses for any Lease Year prior to the Tenant Season Expansion Date. This information was included on page 16 of the Adopted 2018-19 SCSA Budget. In addition, staff has already begun to change the format of financial reporting for the purpose of transparency and to facilitate understanding of the fiscal report. We have made verbal presentations to the board summarizing the changes each time they are implemented.</p>
<p><b>1.L</b> The Stadium Authority Board should direct the Executive Director to notify ManCo that previous annual marketing plans were inadequate as they did not set forth reasonably detailed plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL activities. The Board should further direct the Executive Director to notify ManCo that future marketing plans must include such details and be reviewed for sufficient detail by the Executive Director before being presented to the Board.</p>	Complete	<p>ManCo provided a Sales and Marketing Plan to staff in February 2017 during the 2017-18 budget process. This information was also provided in February 2018. Staff has worked with ManCo to provide a more robust marketing plan that was presented to the Board on March 13, 2018. As noted during the March 13th presentation, the agreement sets a "reasonable detail" standard which we believe the fiscal year 2018-19 plan reflects. The SCSA Board approved the Marketing Plan on March 27, 2018.</p>
<p><b>1.M</b> The Stadium Authority Board should direct the Executive Director to confer with the Finance Director/Treasurer to determine what financial information would be necessary to assess non-NFL event financial performance, including incentive payments to ManCo, and then notify ManCo regarding what additional information will be required on an ongoing basis.</p>	Complete	<p>On October 2, 2018, staff presented the Financial Status Report for the Quarter and Fiscal Year Ending March 31, 2018 which included detailed information by type of event (i.e. concert, sporting events, and miscellaneous events) and by revenue and expense categories. Staff has notified ManCo/StadCo that this information will be required going forward in order to present to the SCSA Board as part of the fourth quarter status report.</p>
<p><b>1.N</b> The Stadium Authority Board should direct the Executive Director to notify ManCo that it is in breach of Management Agreement Section 3.3, which requires that written revenue or other reports relating to non-NFL events be provided to the Stadium Authority within 45 days of each non-NFL event with attendance projected to exceed 25,000. The Stadium Authority Board should further direct the Executive Director to demand that ManCo provide such written revenue reports according to specifications to be detailed by the Treasurer for all future non-NFL events with attendance projected to exceed 25,000.</p>	Partially Complete	<p>Section 3.3 of the Management Agreements states that the Stadium Manager shall furnish the Executive Director, within 45 days of each non-NFL event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, such written revenue or other reports relating to non-NFL events as the parties may agree from time to time. On October 1, 2018, SCSA staff requested in writing that this information be provided to the Executive Director for past non-NFL events and on an ongoing basis. In addition, the letter directed the Stadium Manager to provide a written report on the 2018 International Champions Cup that was held on August 4th within one week of receipt of the letter. To date the Stadium Manager has not complied with this request.</p>

## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<p><b>1.O</b> The Stadium Authority Board should direct the Executive Director and Stadium Authority counsel to request an amendment to the Management Agreement that would require formal and/or informal bidding procedures for any transactions with ManCo affiliates or for transactions above a designated threshold to ensure that goods and services received from an affiliate of ManCo are competitively priced.</p>	<p>Partially Complete</p>	<p>It must be a mutual agreement between both parties to amend the Management Agreement. A letter will be sent to ManCo/StadCo requesting their interest in an amendment and reporting compliance with Section 2.1. Section 2.1 of Amendment No. 1 to the Management Agreement states that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations...it further states that the Stadium Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The forgoing constitutes the Executive Director's delegation to the Stadium Manager. The Executive Director will send a letter to the Stadium Manager ensuring compliance with this provision for the past year and going forward.</p> <p>SCSA staff requested an opinion from the Fair Political Practices Commission (FPPC) on whether these procurement duties require the Stadium Manager to complete a Statement of Economic Interests - Form 700. The FPPC requires public employees who make or influence governmental decisions to submit a Form 700. The FPPC opinion is that these procurement duties do require the Stadium Manager to submit a Form 700. The Stadium Manager complied with this requirement and submitted a Form 700 to the FPPC.</p>
<p><b>1.P</b> The Stadium Authority Board should direct the Executive Director to direct ManCo to provide quarterly written reports to the Stadium Authority, to be maintained as permanent Stadium Authority records, detailing parking lot information as required in the first amendment to the management agreement.</p>	<p>Partially Complete</p>	<p>Section 4.1 Off-Site Parking (First amendment to the Management Agreement) In accordance with Section 2.6.22 of the existing Management Agreement, the Stadium Manager shall have full authority and discretion to select the off-site private parking locations for Stadium Events, and to negotiate, approve, enter into and administer contracts with the private parking lot owners for the use of their parking spaces for all or certain of such Stadium Events which agreements may also make provision, to the extent available, for additional parking for surrounding properties that would be paid for by such properties (Private Parking Agreements). At the quarterly meetings (with the Executive Director) as described in Paragraph 3.3, the Stadium Manager shall report on the status of such Private Parking Agreements, the status of any ongoing negotiations with private parking lot owners, and the financial performance and other matters relating to the off-site private parking locations for Stadium Authority Events, and such other similar or other topics as the Stadium Authority may request. On October 18, 2018, the Executive Director requested in writing that the Stadium Manager begin providing written quarterly reports detailing parking lot information as required by the Management Agreement.</p>
<p><b>1.Q</b> The Stadium Authority Board should direct the Executive Director to require that all meetings, including the date and purpose of the meetings, between Stadium Authority staff and ManCo be documented and reported quarterly or annually to the Stadium Authority Board.</p>	<p>Complete</p>	<p>The Executive Director issued a quarterly report for the period April 1 - June 30, 2018 on July 17, 2018 and will continue providing such a report at the completion of each quarter</p>

## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<p><b>1.R</b> The Stadium Authority Board should direct the Executive Director to establish procedures to ensure that all existing plans, reports, and budget documents required to be provided by ManCo are provided to the Stadium Authority in the manner required by existing agreements. The Stadium Authority Board should further direct the Executive Director to report annually on the status (receipt, review, and approval status) of each required plan, report, and budget document.</p>	Complete	Staff has prepared a schedule to track the deliverables. The required documents were provided to staff in February 2018 during the 2018-19 budget process as reported at the March 13, 2018 Stadium Authority Budget Study Session.
<p><b>2. STADIUM AUTHORITY REVENUES AND EXPENSES</b></p>		
<p><b>2.A</b> The Stadium Authority Board should request that ManCo provide the relevant reports and documentation that back up the NFL ticket surcharge summary report in order to retain permanent verification of the accuracy of the surcharge calculated by ManCo.</p>	Partially Complete	ManCo was notified in writing on October 9, 2018, to provide all relevant reports and documentation that back up the NFL ticket surcharge to the SCSA. StadCo responded on October 18, 2018 to affirm receipt of the letter and to notify staff that they are in the process of providing the requested documentation.
<p><b>2.B</b> The Stadium Authority Board should negotiate with ManCo to establish a level of detail regarding non-NFL event revenue and expenses that can be provided in City reports, public documents, and permanent records to be kept by the Stadium Authority without compromising ManCo's ability to book and negotiate deals with non-NFL event acts and performances. The Board should direct staff to include this level of detail for both budgeted and actual revenues and expenses in the annual proposed budget and the quarterly financial status reports to allow the Board and public to monitor the performance of non-NFL events and ManCo's performance in managing and executing the events.</p>	Complete	On October 2, 2018, staff presented the Financial Status Report for the Quarter and Fiscal Year Ending March 31, 2018 which included detailed information by type of event (i.e. concert, sporting events, and miscellaneous events) and by revenue and expense categories. Staff has notified ManCo/StadCo that this information will be required going forward in order to present to the SCSA Board as part of the fourth quarter status report.
<p><b>2.C</b> The Stadium Authority Board should require that a detailed breakdown of performance rent calculations and payments to the City of Santa Clara be included in the budget and quarterly financial status reports using additional information provided by ManCo.</p>	Complete	Performance Rent calculation was included in the Stadium Authority's Quarterly Financial Report that was presented to the Board on November 21, 2017 and was included in the Adopted 2018-19 SCSA Budget.
<p><b>2.D</b> The Stadium Authority Board should require that ManCo provide reports and documentation that can be kept in Stadium Authority records, consistent with confidentiality provisions in the agreements that back up the non-NFL ticket surcharge summary report in order to verify that the surcharge calculated by ManCo is accurate.</p>	Partially Complete	SCSA staff reviewed the non-NFL ticket surcharge process with ManCo. This is currently under review for completeness.

## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<b>2.E</b> The Stadium Authority Board should require that a comprehensive accounting of Debt Service Fund transactions, including beginning and year-end balances, budget vs. actual revenues and expenditures by specific line item, and details on all transfers in and out of the fund, be presented in Stadium Authority budgets and financial status reports.	Complete	This information has been incorporated in the Stadium Authority's 2017-18 Budget, 2018-19 Budget, and current Quarterly Financial Status Reports.
<b>2.F</b> The Stadium Authority Board should require that Discretionary Fund revenues, expenses, budget-to-actual comparisons, and account balances be reported in Stadium Authority budgetary documents separately from the Operating Fund.	Complete	The discretionary fund expenses and budget-to-actual comparisons have been reported to the SCSA Board beginning with the YE 3/31/15 Stadium Authority Financial Status Report that was presented on 8/18/15. The revenues that fund the discretionary fund and the account balance have been reported to the SCSA Board since the QE 6/30/16 Stadium Authority Financial Status Report that was presented on 8/23/16. The Discretionary Fund is shown separately on page 16 of the 2018-19 Adopted SCSA Budget.
<b>2.G</b> The Stadium Authority Board should require that ManCo prepare the five year Shared Expense Budget, per the requirements in the Stadium Management Agreement, and the Board should direct the Executive Director to document receipt of the Shared Expense Budget, and provide written comments to ManCo in response to the proposed expenses.	Complete	ManCo provided a one year budget and five year projection of shared stadium expenses to staff in February 2017 during the 2017-18 budget process. ManCo was notified that they were to provide this plan annually. These documents were provided to SCSA staff in February 2018 during the 2018-19 budget process and incorporated into the 2018-19 Adopted SCSA Budget. (This recommendation seems to be a repeat of recommendation 1.J)
<b>2.H</b> The Stadium Authority Board, StadCo, and ManCo should amend the Management Agreement or separately establish binding policies that do not allow retroactive increases in authorized expenditures such as Stadium Manager expenses, and should require that detailed explanations be provided to the Board when additional funding is requested midyear in advance of such expenses being incurred.	Complete	SCSA staff has been proactive in bringing the budget adjustments to the Board before the expense is incurred. In addition, The SCSA Board adopted a Budget Policy on March 13, 2018 that requires that budget amendments are approved by the Board before the expense is incurred.
<b>2.I</b> The Stadium Authority should require that ManCo provide independently prepared reports and documentation to back up the number of NFL tickets sold for each fiscal year in order to verify that the senior/youth fee calculated by ManCo is accurate and to have a set of permanent records documenting the validity of this revenue.	Partially Complete	ManCo was notified in writing on October 9, 2018, to provide all relevant reports and documentation that back up the NFL ticket surcharge to the SCSA. StadCo responded on October 18, 2018 to affirm receipt of the letter and to notify staff that they are in the process of providing the requested documentation.
<b>2.J</b> The Stadium Authority Board and the City of Santa Clara should clarify when the City Purchasing Authority procurement thresholds (Santa Clara Municipal Code Chapter 2.105.070 et seq.) apply and when the Stadium Authority Procurement Policy thresholds (Santa Clara Municipal Code Chapter 17.30) apply.	Complete	The current practice is to use the City's more restrictive Purchasing Authority threshold if the City is purchasing items on behalf of the Stadium Authority. The City has hired a Purchasing Manager and one of his goals is to update the City and Stadium Authority's procurement policies. With the SCSA Board's approval of establishing a Policy Manual, staff will introduce additional fiscal and procurement policies for its consideration.

## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<b>2.K</b> The Stadium Authority Board should direct staff to prepare policies and procedures pertaining to all purchases made on behalf of the Stadium Authority to require a level of specificity in costs and services in all vendor contracts, that all invoices bill using the rates or unit costs specified in their contracts, and that the invoices and contracts be periodically reviewed by Stadium Authority staff.	Complete	Chapter 17.30 of the City of Santa Clara Code titled "Stadium Authority Procurement Policy", provides the policies and procedures with respect to procurement for the SCSA. The City has recently hired a Contracts Manager and as part of his duties he will be actively monitoring to ensure that billing rates and unit costs are consistent with vendor contracts. In addition, further review of billing rates and unit costs are included as part of the Accounts Payable job duties and further reviewed by the Stadium Authority's external auditor's during their year-end audit procedures. Staff will continue to update the Stadium Authority's Administration Manual as time permits.
<b>2.L</b> The Stadium Authority Board should require that budgets and actual expenditures for the Stadium construction budget be presented alongside the Stadium Authority Operating Budget to provide an accurate overall picture of purchases for all materials, services, and supplies for the Stadium.	Complete	The construction budget is shown in the Quarterly Financial Reports and Annual Budgets as part of the Capital Expense Budget. The remaining construction budget is designated for warranty related work. For the FY 2018-19 Adopted Stadium Authority Budget, the information is provided on pages 28 - 31.
<b>2.M</b> The Stadium Authority Board should direct staff to report actual revenues and expenditures on an accrual basis in budgetary documents so that all amounts presented reflect actual results for the year, regardless of the timing of revenue receipt or expenses incurred.	Complete	The Stadium Authority's Third Quarter Financial Report presented to the Board on February 13, 2018 included adjustments to bring the budget to full accrual. The Adopted 2018-19 SCSA Budget was prepared using the accrual method of budgeting. In addition, accrual budgeting was included in the SCSA Budget Policy approved by the Board on March 13, 2018 as a requirement.
<b>3. UNCLAIMED, UNREIMBURSED CITY STAFF COSTS</b>		
<b>3.A</b> The Stadium Authority Board should request that staff prepare plans for reimbursement to the City's General Fund for unreimbursed staff costs from the appropriate source: Discretionary Fund, ManCo, or, to the extent funds are available and appropriate, the Construction Fund.	Partially Complete	Staff has self-corrected where it was clear that the General Fund was incorrectly charged for Stadium Authority staff time and the General Fund has been repaid in the amount of \$11,641. Now that the Stadium Authority Auditor position has been filled, one of her duties will be to review this recommendation and if warranted, work with staff and/or an outside consultant on any additional corrective action.
<b>3.B</b> The Stadium Authority Board should request that staff have ManCo prepare an annual comprehensive Public Safety budget, as required by the Stadium Lease, to include all components of Stadium public safety costs and reimbursement, including NFL public safety costs paid for directly by ManCo on behalf of StadCo, by the Stadium Authority from the Discretionary Fund, and any costs paid using other funds such as the Construction Fund.	Complete	ManCo provided a Public Safety Budget to staff in February 2017 during the 2017-18 budget process. This was also provided to staff on February 7, 2018 as part of the 2018-19 budget process. The Public Safety Budget was included as part of the 2018-19 Adopted SCSA Budget that was presented to the Board on March 13, 2018.
<b>3.C</b> The Stadium Authority Board should direct staff to develop specific definitions of which costs should be charged as overhead and which should be direct billed. Alternatively, staff should adjust the rate applied to direct billed staff costs from the current 10 percent to a more appropriate rate, and communicate to all staff which positions or activities will be charged as overhead.	Partially Complete	Staff is in the process of selecting a consultant to prepare an updated Cost Allocation Plan ("CAP"). The completion date for the CAP is targeted for the March/April 2019 timeframe. Once the updated CAP is complete, staff will have a more appropriate overhead rate to be used for Stadium costs.

## STATUS OF HARVEY ROSE ASSOCIATES AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
<b>4. STADIUM PARKING REVENUE CONTROLS</b>		
<b>4.A</b> The Stadium Authority should exercise its right stipulated in the agreement between master parking lot operator Citypark and ManCo to periodically audit the detailed records of individual parking lots for NFL and non-NFL events.	Complete	ManCo engaged the audit firm BDO USA, LLP to perform an audit of Parking and Concessions. City staff observed and assisted with the audit process at a Non-NFL event (Gold Cup on 7/26/17). Staff has received a copy of the final audit report that included several findings. ManCo is working with the Parking vendor (ImPark), Concessionaire vendor (Levy), and Merchandise vendor (Fanatics) on responses to the various audit findings and recommendations. SCSA will receive a copy of the responses to the audit findings once they are complete.
<b>4.B</b> The Stadium Authority Board should direct staff to report back on the advantages and disadvantages of adding City audit rights as a condition of granting parking permits.	Complete	Staff has included audit rights language as a condition of granting parking permits
<b>4.C</b> The Stadium Authority Board should direct staff to require that ManCo provide a written report on matters related to off-site parking operations at their quarterly meetings, requiring that baseline information be provided in a specific format.	Partially Complete	A letter was mailed on October 18, 2018 from the Executive Director to the Stadium Manager requesting that he provide written reports on parking location, capacity, and availability dates for large non-NFL events beginning with the next Quarterly Status Meeting scheduled for November 29, 2018.



# SCSA

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Santa Clara Stadium Authority

October 1, 2018

Mr. Jim Mercurio, Stadium Manager  
San Francisco Forty Niners Management Company  
4900 Marie P. De Bartolo Way  
Santa Clara, California 95054

**SUBJECT: Management Agreement 3.3**

Dear Mr. Mercurio:

Over our past monthly meetings, I have advised of the need for your compliance with Stadium Management Agreement Section 3.3.<sup>1</sup> In addition to the other compliance matters that we have discussed, I am reminding you that per the terms of the Stadium Management Agreement.

*Stadium Manager shall furnish the Executive Director, within 45 days of each Non-NFL Event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, such written revenue or other reports relating to Non-NFL Events as the Parties may agree from time to time.*

To date, I have not received any written reports as required by the foregoing provision. Our records show that the Stadium Authority Executive Director has never received such reports since Stadium Management Company (ManCo) began operations at the Stadium. ManCo will remain out of compliance with the Stadium Management Agreement, **unless it provides within 30 calendar days all of the past due required quarterly written reports** in accordance with the Stadium Management Agreement that contain the following information for all Non-NFL Events:

- Brief Event Narrative (overview report on event highlights)
- Event Contract
- Event Pro-Forma
- Profit & Loss Statement detailing all revenue and expense items, including all Non-NFL Event Revenue as defined in the Amended and Restated Stadium Lease<sup>2</sup>
- Statistical Event Data such as number of tickets sold, number of tickets scanned, total number of cars parked (main lot and offsite lots), etc.

For the Non-NFL Events with attendance not projected to exceed 25,000, **please provide quarterly reports as outlined above in accordance with the Stadium Authority fiscal year calendar: by March 31, June 30, August 31 and December 31.** Additionally, according to the Levi's Stadium events calendar, the last Non-NFL Event was the 2018 International Champions Cup on August 4, an event with attendance projected to exceed 25,000. I expect to receive the written report, as detailed

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<sup>1</sup> Section 3.3 (Quarterly Status Meeting) of First Amendment to Stadium Management Agreement made and entered into as of November 13, 2012 by and between the Santa Clara Stadium Authority, Forty Niners Stadium Management Company LLC, and Forty Niners SC Stadium Company

<sup>2</sup> Section 12.8 Non-NFL Event Revenue



**Mr. Jim Mercurio, Stadium Manager**

**Re:** Management Agreement 3.3

October 1, 2018

Page 2 of 2

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above, for this event within a week of this letter and for the upcoming concert within the time frame established by the Management Agreement.

These written reports do not replace the existing staff-level administrative processes of ManCo providing data for each Non-NFL Event to Santa Clara Stadium Authority (SCSA) as it becomes available. ManCo should continue providing ticket and parking data by email to SCSA Treasurer or her delegate and load data on the shared laptop in the SCSA Stadium office.

Thank you in advance for your compliance with the Stadium Management Agreement. If you have records indicating that Stadium Authority Executive Director received the required information according to the Stadium Management Agreement terms, please provide me with those records.

Sincerely,



Deanna J. Santana  
Executive Director

cc: Stadium Authority Board  
Walter C. Rossmann, Chief Operating Officer  
Brian Doyle, Stadium Authority Counsel

# SCSA

Santa Clara Stadium Authority

October 9, 2018

Mr. Scott Sabatino  
Forty Niners Football Company LLC  
4949 Marie P. DeBartolo Way  
Santa Clara, CA 95054

**RE: Amended and Restated Non-Relocation Agreement**

Dear Mr. Sabatino:

Per Article 5 of the Amended and Restated Non-Relocation Agreement the Team ("49ers") shall collect, on the Stadium Authority's behalf, the NFL Ticket Surcharge for all NFL Surcharge Games in an amount equal to ten percent (10%) of the Ticket Receipts and shall deliver to Stadium Authority all collected NFL Ticket Surcharges for each such NFL Surcharge Game within ten (10) days after the game is played.

The Stadium Authority currently receives a summary spreadsheet from the 49ers that provides the following information:

- Net amount for NFL Ticket Receipts
- Calculated Senior/Youth Program Fees
- Calculated NFL Ticket Surcharge
- Number of Tickets Sold per NFL game

However, the Stadium Authority does not receive supporting documentation in order to independently verify that the NFL Ticket Surcharge and Senior/Youth Program fees that are reflected in the summary spreadsheet are calculated correctly. On May 17, 2018, Santa Clara Stadium Authority (SCSA) staff met with StadCo representatives to review ManCo/StadCo's accounting system and at that meeting requested that we be provided all supporting documentation for the SCSA financial reports.

Therefore, I am requesting the following information in order to perform a due diligence audit to confirm the amount of NFL Ticket Surcharge and Senior/Youth Program fees that are delivered to the Stadium Authority:

- Relevant reports and documentation that would provide back up for the NFL ticket surcharge summary report in order to retain permanent verification of the accuracy of the calculated surcharge; and
- Independently prepared reports and documentation to back up the number of NFL tickets sold for each fiscal year in order to verify the accuracy of the calculated Senior/Youth fee.

If you have any questions please do not hesitate to contact me at [akraetsch@santaclaraca.gov](mailto:akraetsch@santaclaraca.gov) or 408-615-2342.

Sincerely,

  
Angela Kraetsch  
Treasurer

cc: Executive Director  
Stadium Authority Counsel

# SCSA

Santa Clara Stadium Authority

October 18, 2018

Mr. Jim Mercurio, Stadium Manager  
San Francisco Forty Niners Management Company  
4900 Marie P. De Bartolo Way  
Santa Clara, California 95054

## **SUBJECT: Off-Site Parking**

Dear Mr. Mercurio:

Per the terms of the Stadium Management Agreement<sup>1</sup>,

*Stadium Manager shall have full authority and discretion to select the off-site private parking locations for Stadium Events, and to negotiate, approve, enter into and administer contracts with the private parking lot owners for the use of their parking spaces for all or certain of such Stadium Events which agreements may also make provision, to the extent available, for additional parking for surrounding properties that would be paid for by such properties ("Private Parking Agreements"). At the quarterly meeting described in Paragraph 3.3 above, the Stadium Manager shall report on the status of such Private Parking Agreements, the status of any ongoing negotiations with private parking lot owners, and the financial performance and other matters relating to the off-site private parking locations for Stadium Authority Events, and such other similar or other topics as the Stadium Authority may request.*

As we discussed during our most recent Quarterly Status Meeting on August 23, 2018 monthly coordination meeting, the notification currently provided via email from the Forty Niners Stadium Management Company LLC (ManCo) to the City of Santa Clara (City) on behalf of the Forty Niners SC Stadium Company LLC (StadCo) pursuant to the Parking Rights Agreement<sup>2</sup> does not satisfy this agreement provision. The February 14, 2018 notification emailed to me is attached for your reference.

Beginning with the next Quarterly Status Meeting<sup>3</sup> on November 29, 2018, please provide written reports in accordance with the above agreement provision including but not limited to the location, parking capacity and availability dates for large non-NFL events; in addition, load the financial performance data, including detail of all revenues and expenditures by location and agreement, in Microsoft Excel or some other electronic spreadsheet format on the laptop in the Santa Clara Stadium Authority (SCSA) office at Levi's Stadium as it becomes available and at least two weeks before every Quarterly Status Meeting. Notify SCSA Treasurer Angela Kraetsch and Stadium Authority Auditor Linh Lam when information is available on the laptop.

Sincerely,



Deanna J. Santana  
Executive Director

Attachment

<sup>1</sup> Section 4.1 of the First Amendment to Stadium Management Agreement made and entered into as of November 13, 2012 by and between the Santa Clara Stadium Authority, Forty Niners Stadium Management Company LLC, and Forty Niners SC Stadium Company

<sup>2</sup> Parking Rights Agreement made and entered into as of March 28, 2012 by and among the City of Santa Clara and Forty Niners SC Stadium Company, LLC

<sup>3</sup> Section 3.3 of the First Amendment to Stadium Management Agreement made and entered into as of November 13, 2012 by and between the Santa Clara Stadium Authority, Forty Niners Stadium Management Company LLC, and Forty Niners SC Stadium Company

Mr. Jim Mercurio, Stadium Manager  
Re: Off-Site Parking  
October 18, 2018 page 2 of 2

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CC: Walter C. Rossmann, Chief Operating Officer  
Brian Doyle, Stadium Authority Counsel  
Angela Kraetsch, Stadium Authority Treasurer  
Linh Lam, Stadium Authority Auditor





**FORTY NINERS STADIUM MANAGEMENT COMPANY**

February 14, 2018

**VIA ELECTRONIC MAIL**

Attn: Deanna Santana  
City Manager, City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

Dear Deanna,

Pursuant to Sections 2.1, 2.3 and in accordance with sections 7 and 16 of the City of Santa Clara Parking Rights Agreement ("Agreement"), by and between the City of Santa Clara ("City"), and Forty Niners SC Stadium Company, LLC ("StadCo"), StadCo hereby notifies the City of the use of the Tasman Garage, Convention Center/TechMart Garage and Tasman Drive Surface Lots in conjunction with the attached events.

The attached list includes events scheduled thus far for 2018. New events, updated times, and updated lot requests will be added and highlighted in future requests.

We are excited about the upcoming season at Levi's® Stadium. As future events are confirmed, we will notify you.

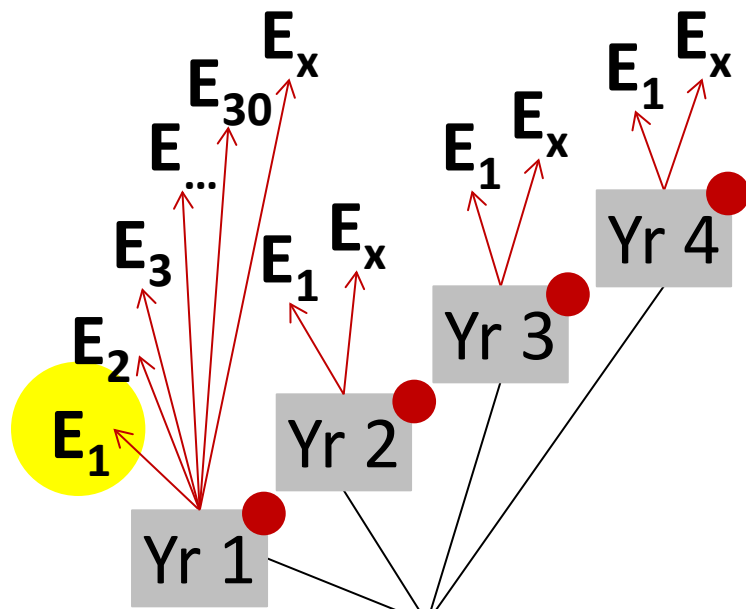
Sincerely,

Jim Mercurio  
Vice President Stadium Operations  
General Manager  
Forty Niners Stadium Management Company LLC

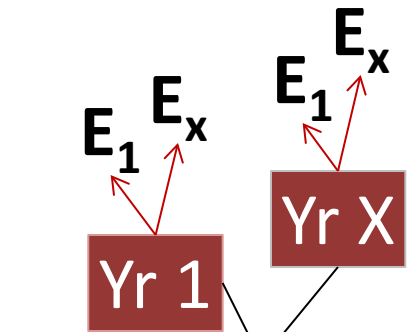
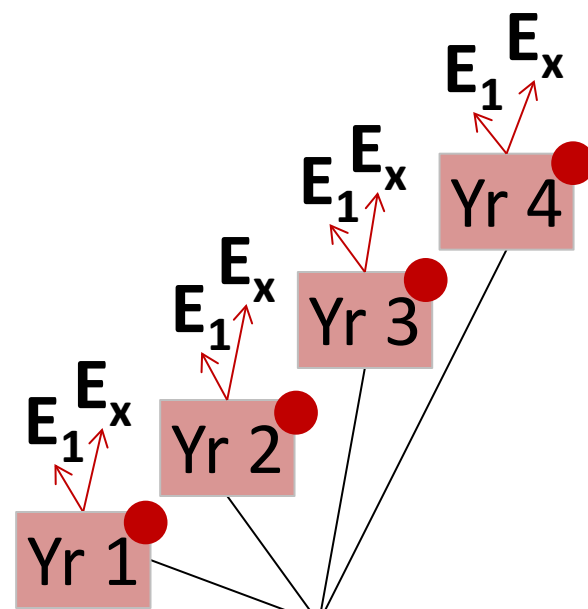
CC – Walter Rossmann, City Attorney  
Ruth Shikada, Assistant City Manager  
Hannah Gordon, 49ers Vice President of Legal and Government Affairs  
Rahul Chandhok, 49ers Manager of Government Affairs  
49ers Stadium Operations



Date	Event	Expected Attendees	Start Time	Lot Request
Friday, March 23, 2018	Mexico Soccer Match	70,000	7:00 PM	Convention Center/TechMart Garage, Tasman Garage & Tasman Drive Surface Lots
Saturday, April 28, 2018	Monster Jam	30,000	2:00 PM	Convention Center/TechMart Garage, Tasman Garage & Tasman Drive Surface Lots
Friday, May 11, 2018	Taylor Swift Concert	50,000	6:00 PM	Convention Center/TechMart Garage, Tasman Garage & Tasman Drive Surface Lots
Saturday, May 12, 2018	Taylor Swift Concert	50,000	6:00 PM	Convention Center/TechMart Garage, Tasman Garage & Tasman Drive Surface Lots
				Garage & Tasman Drive Surface Lots



Legend E = Event  
 Yr = Year  
 ● = Accounting Principles  
**Total Events from Y1 to Y4= 660**



**DOCUMENTS**

Complete  
 or  
 Incomplete

- ❖ Methodology
- ❖ Systems Development

**ANALYZE**

Findings  
 Y1 to Y4

**COMPARISON**  
 against  
 data/reports issued

Validate  
 Yr X = Yr X  
 or  
 Find not Valid  
 Yr X ≠ Yr X

